

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MOUNTAINEERS FOUNDATION, a
Washington public benefit corporation,

Plaintiff,

v.

THE MOUNTAINEERS, a Washington non-
profit corporation,

Defendant.

No.: 2:19-cv-01819

COMPLAINT

Plaintiff Mountaineers Foundation ("Plaintiff" or "The Foundation") by and through its attorneys, and for its Complaint against Defendant, The Mountaineers ("Defendant") hereby alleges as follows:

I. INTRODUCTION

1. The Foundation brings this action to stop Defendant from unlawfully taking the brand, bequeathed assets and goodwill that rightfully belong to The Foundation. The Foundation has engaged in charitable fundraising services over the past 50 years. In that time, it has come to be known throughout the world as the source of these charitable services and as a steward of the environment.

2. Defendant seeks to take the funds, property and financial bequests directed to The Foundation, by simply using The Foundation's name and mark. In fact, after 50 years of use by

1 The Foundation, Defendant now claims that it owns and has the right to call itself THE
2 MOUNTAINEERS FOUNDATION. Defendant even filed trademark applications with the United
3 States Patent and Trademark Office ("Trademark Office") and claimed, under penalty of perjury,
4 that it continuously and exclusively used THE MOUNTAINEERS and THE MOUNTAINEERS
5 FOUNDATION trademarks in association with charitable fundraising services since as early as
6 1907 and that no other persons had rights to use the mark in commerce.

7 3. These statements are false. Defendant's tax exempt status was revoked by the
8 Internal Revenue Service around 1968 and it could not engage in charitable fundraising services.
9 It did not regain this status until over 43 years later.

10 4. Moreover, Defendant knew these statements to the Trademark Office were false.
11 Defendant admitted under penalty of perjury, that it could not have even accepted charitable
12 donations prior to 2011. Defendant knew that The Foundation had substantially, continuously and
13 exclusively used MOUNTAINEERS and the MOUNTAINEERS FOUNDATION for charitable
14 services for almost 50 years when it filed its federal trademark applications for these marks.
15 Defendant made these false statements to the Trademark Office to induce the Trademark Office
16 issue registrations. This is fraud.

17 5. Defendant cannot just start using the name of an independent organization, obtain
18 a trademark and then claim ownership over that organization's assets. For this reason, The
19 Foundation respectfully brings this action for trademark infringement, unfair competition, unjust
20 enrichment, declaratory relief and for violations of the Washington Consumer Protection Act.

21 II. PARTIES

22 6. The Foundation is a Washington public benefit corporation with its principal place
23 of business in Bremerton, Washington. It is an independent organization founded in 1968, and is
24 dedicated to the conservation of Washington's environment and passing along the best possible
25 environmental legacy to future generations through its community grants, conservation education,
26 property acquisition, and The Mountaineers Foundation Rhododendron Preserve ("The Preserve")

ownership, management and expansion. It provides these services in Washington State and across the country through, among other things, its charitable fundraising services. In fact, since its inception, The Foundation has awarded hundreds of grants to nonprofit organizations throughout the Pacific Northwest.

7. Defendant is a Washington not-for-profit organization with its principal place of business in Seattle, Washington. Defendant is an alpine club that hosts a wide range of outdoor recreational activities, primarily alpine mountain climbing and hikes, in addition to classes, training, and social events. Defendant attested under penalty of perjury that it did not receive charitable donations until after 2011.

III. JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this dispute pursuant to 15 U.S.C. §§ 1121 *et seq.*, and 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202. The Court, further, has supplemental jurisdiction over the state law claims alleged in this Complaint pursuant to 28 U.S.C. § 1367.

9. This Court has personal jurisdiction over Defendant because it has engaged in substantial business activities in and directed to this district, is registered to do business in this district and because the infringement of trademarks and unfair competition alleged herein took place, in substantial part, in this district. Venue therefore properly lies in this Court and the Western District of Washington, pursuant to 28 U.S.C. §§ 1391(b)(1) and (2).

10. Moreover, the Court has jurisdiction over this matter and venue is appropriate in this district because The Foundation is located in and operated from this district and a substantial portion of the events giving rise to the present suit took place in this district.

IV. FACTS AND BACKGROUND

A. The Foundation and the Current Dispute

11. The Foundation is a registered 501(c)(3) public benefit corporation dedicated to the preservation and conservation of a healthy environment through educational programs, the

1 acquisition and stewardship of critical habitats in the state, and the provision of grants to other
2 conservation-focused not-for-profit organizations.

3 12. The Foundation was formed in 1968 and has operated under the name the
4 MOUNTAINEERS FOUNDATION for the past 50 years. During this time, it has made and
5 continues to make extensive use of this name on its website and in its promotional materials in
6 connection with its educational and conservation efforts, and in connection with its charitable
7 fundraising and grant programs.

8 13. Through this extensive use, The Foundation accumulated considerable assets and
9 goodwill, arising in part from generous financial bequests from the public. In order to protect the
10 goodwill that had become associated with its name, in 2017, The Foundation applied for and
11 received Washington Trademark Registration No. 60088 for (THE) MOUNTAINEERS
12 FOUNDATION.

13 14. Defendant, learning of The Foundation's goodwill, embarked on a plan to divert
14 The Foundation's assets and financial bequests to Defendant. It started by seeking a federal
15 trademark protection for THE MOUNTAINEERS and THE MOUNTAINEERS FOUNDATION
16 for charitable fundraising services. It then claimed to initiate use of this mark with its own
17 charitable services – all in the hopes of deceiving the public into misdirecting their donations,
18 volunteer hours, and other resources to Defendant.

19 15. Defendant's actions are made all the more egregious because it has been well aware
20 of The Foundation's historical use of MOUNTAINEERS and the MOUNTAINEERS
21 FOUNDATION over the past 50 years. The Foundation and Defendant worked together on several
22 educational and conservation efforts including: The Preserve; the publication of a book entitled
23 *the Arctic National Wildlife Refuge: Season of Life and Land*; and the development of The
24 Mountaineers Tacoma Program Center, an event venue in Tacoma, Washington.

25 16. Defendant never objected to The Foundation's use of MOUNTAINEERS or the
26 MOUNTAINEERS FOUNDATION over this lengthy time period. Defendant never exercised any

1 control over The Foundation or directed its activities related to its uses of these marks. It could
2 not. It could not accept charitable donations because it was involved in political activities. In fact,
3 The Foundation was created as an entirely separate entity to engage in these fundraising activities
4 as well as certain other conservation efforts. This was done with Defendant's knowledge and
5 consent.

6 17. Defendant was required to abandon its charitable fundraising activities in 1968.
7 Defendant did abandon these activities in 1968. Defendant then watched The Foundation
8 continuously and exclusively use MOUNTAINEERS and the MOUNTAINEERS FOUNDATION
9 for charitable fundraising activities for almost 50 years and develop substantial goodwill without
10 objection.

11 **B. The Origin of Defendant and its Loss of Tax Exempt Status**

12 18. Defendant is an outdoor recreation and social club originally conceived of in 1906
13 by W. Montelius Price and Ashael Curtis. The two men were members of Mazamas, a
14 mountaineering organization based in Portland, Oregon. After meeting and speaking with one
15 another on a number of hikes organized by Mazamas, Price and Curtis developed a plan to form a
16 club similar to Mazamas in Seattle.

17 19. That club, which came to be known as The Mountaineers Auxiliary To The
18 Mazamas, held its first meeting on January 18, 1907, at the Seattle Chamber of Commerce hall.
19 The group organized hikes, outdoor walks, and other social gatherings for its members. Later that
20 year, the club dropped the appended "Auxiliary To The Mazamas" but continues to exist to this
21 day and organizes hiking and outdoor trips for its members every year.

22 20. As the organization continued to grow, however, its members considered
23 expanding beyond its initial recreational mission in order to enter the political arena and it began
24 lobbying for environmental legislation and the governmental protection of critical habitats.

21. This expanded mission was not unanimously accepted by all the club's members. Indeed, it was cited as one of the reasons that a number of members of Defendant left the organization to found The Wildlife Foundation in 1920.

22. Despite these protests, the bid to direct the club's efforts towards political ends was ultimately successful and the organization was formed as a non-profit charitable organization in the State of Washington on July 24, 1913, with an express legislative agenda included in its Articles of Incorporation, a copy of which is attached hereto as **Exhibit A**.

23. According to its Articles of Incorporation, Defendant, as an organization, was intended to advance the following purposes:

To explore and study the mountains, forests and watercourses of the Northwest and beyond; to gather into permanent form the history and traditions of this region; to preserve by example, teaching and the encouragement of protective legislation or otherwise, the natural beauty of Northwest America; to make expeditions into these regions in fulfillment of the above purposes; to encourage a spirit of good fellowship among all lovers of out-door life.

To hold real estate and personal property to receive, hire, purchase, occupy and maintain and manage suitable buildings and quarters for the furtherance of the purposes of the association, and to hold in trust or otherwise funds received by bequest or gift or otherwise, to be devoted to the purposes of said association.

Id. at 3-4 (emphasis added).

24. In 1968, due at least in part to its political agenda, the Internal Revenue Service revoked Defendant's tax-exempt status. Pursuant to the Revenue Act of 1969, the Internal Revenue Service was authorized to revoke a charitable organization's exemption and qualification to receive deductible contributions if it makes a determination that such organization has engaged in substantial political activities.

25. In response to the Internal Revenue Service's determination, Jesse Epstein, the then-president of Defendant led an effort to establish The Foundation in order to raise funds and make grants to environmental organizations in the Pacific Northwest, an agenda that Defendant could not pursue after the revocation of its tax exempt status.

26. In fact, because of these changes to its federal tax status, Defendant expressly abandoned and stopped all use of THE MOUNTAINEERS for charitable fundraising purposes. It could not even be affiliated with these charitable services without being taxed or running afoul of the Internal Revenue Service.

C. The Incorporation of The Foundation as a Tax-Exempt Entity

27. The Foundation is a registered 501(c)(3) public benefit corporation dedicated to the preservation and conservation of a healthy environment through educational programs, the acquisition and stewardship of critical habitats in the state, and the provision of grants to other conservation-focused not-for-profit organizations.

28. On June 24, 1968, The Foundation was formed with the Washington Secretary of State as a nonprofit charitable organization with the express purpose of creating an independent tax-exempt organization to accept and administer public donations.

29. The 1968 Articles of Incorporation of The Foundation is attached hereto as **Exhibit B**, and provides in relevant part that The Foundation intends to:

[O]perate *exclusively for charitable, scientific, literary, testing for public safety, and educational purposes as set forth in 501 (c) (3) of the Internal Revenue Code* . . . To promote the well-being of mankind throughout the world by direct action through research, publication, testing for public safety, lectures and education and by other appropriate means and by *contributions to other exempt charitable, scientific, literary or education organizations as specified in Section 501(c) (3)*

Id. at 2 (emphasis added).

30. This was the first use of the MOUNTAINEERS FOUNDATION. Since this time and for almost 50 years, Defendant did not claim any exclusive right to the use of THE MOUNTAINEERS or THE MOUNTAINEERS FOUNDATION.

31. The Foundation and Defendant are entirely separate and distinct entities that operated pursuant to arms-length agreements. The Foundation and Defendant never entered into any licensing or other contractual arrangement for use of these marks. Defendant never exercised

any control over The Foundation's use of these marks. Nor was any such agreement included in or contemplated by The Foundation's Articles of Incorporation.

32. The seven incorporators of The Foundation—Jesse Epstein, John Davis, Leo Gallagher, Joan Hanson, Morris Moen, John Ossseward, and Paul Wiseman—had all been officers or trustees of The Mountaineers. However, The Foundation's by-laws do not restrict membership to The Foundation to members of Defendant.

33. In 1985, The Foundation amended its Articles of Incorporation to provide that The Foundation would also:

[E]ngage in the ownership and preservation of real property for the purpose of:

- a. Conserving ecology systems, natural resources, and open space;
- b. Permitting and facilitating scientific research and educational opportunities for the general public; and
- c. Preserving natural plants, biotic communities and wildlife on such real property.

A copy of the Articles of Amendment is attached hereto as **Exhibit C**.

D. Defendant and The Foundation Collaborations

34. Defendant and The Foundation have been entirely separate organizations since The Foundation's inception. They had to be. The laws prohibited Defendant from accepting charitable donations without running afoul of the tax laws. Moreover, Defendant was prohibited by these laws from controlling the operations of The Foundation.

35. That is not to say that the Parties did not collaborate on a few discrete projects. As noted in Defendant's 1983-1990 "The Mountaineer Annual" which detailed the work of the organization from 1983 to 1990, The Foundation and Defendant worked together on certain discrete projects including: the publication of Defendant's book: *Washington's Wild Rivers - The Unfinished Work*; the ongoing acquisition of books and journals; the restoration of the historic Mount Pilchuck Lookout; and the publication of *The Mountaineer* magazine. A copy of select portions of Defendant's 1983-1990 Annual, published in 1991, is attached hereto as **Exhibit D**.

36. In addition, in 1985 The Foundation entered into a Conservancy Agreement with Defendant in which Defendant transferred to The Foundation, among other properties, various parcels of land in Kitsap County that have come to be known as The Preserve. The Preserve contains virgin timber forest and a unique display of native rhododendrons.

37. Pursuant to the Agreement, The Foundation made use of its tax-exempt status to raise funds to help pay for maintenance and operation of The Preserve.

E. **Defendant's Merger and Renewed Tax-Exempt Status**

38. It was not until 2011 that Defendant regained its tax-exempt status following a merger with "The Mountaineers of the Pacific Northwest." A copy of the Articles of Incorporation is attached hereto as **Exhibit E**.

39. In a statement announcing its decision to regain its tax-exempt status, Defendant explained that the primary justification was to increase its revenues by encouraging and soliciting individual donations from the public; specifically, it explained:

[O]ur previous tax status as a 501(c)(4) ***inhibited our ability to find funding sources*** to support our mission. ***Operating as a 501(c)(3) will expand our capacity to support our services, trips, and classes by making it easier for us to fundraise, including: Individual donations are tax-deductible,*** Access to grants from foundations and corporations, [and] All annual membership dues are tax deductible as a non-profit contribution.¹

40. Defendant attested under penalty of perjury that prior to its change in tax exempt status in 2011, Defendant did not receive charitable financial donations directly from donors. Defendant's October 18, 2018, Declaration is attached hereto as **Exhibit F**.

41. Not content to merely accept donations from its own members, however, Defendant recently has begun to impermissibly use The Foundation's name and brand to misdirect donations and bequests intended for The Foundation to Defendant.

¹ The Mountaineers, 501(c)(3) Tax Status, <https://www.mountaineers.org/about/vision-leadership/board-of-directors/501-c-3-tax-status> (emphasis added).

1 **F. The Foundation's Mark**

2 42. The Foundation owns Washington Trademark Registration No. 60088 for the mark
3 (THE) MOUNTAINEERS FOUNDATION for use in International Class 35 (the "'088"
4 Registration). The '088 Registration issued on July 6, 2017. A copy of the '088 Registration is
5 attached here as **Exhibit G**.

6 43. Prior to the '088 Registration, The Foundation has used the MOUNTAINEERS
7 FOUNDATION as a trademark, a trade name, and engaged the use of the MOUNTAINEERS
8 FOUNDATION, analogous to trademark use, and has continuously, substantially and exclusively
9 used the MOUNTAINEERS FOUNDATION in association with its charitable fundraising
10 services.

11 44. The Foundation began using the MOUNTAINEERS FOUNDATION mark as a
12 trademark in intrastate and interstate commerce prior to Defendant, and at least as early as 1968.

13 45. The Foundation has developed and enjoys extensive goodwill throughout the
14 United States with respect to the MOUNTAINEERS FOUNDATION. The Foundation established
15 this goodwill through the expenditure of money in advertising and/or promotion of the
16 MOUNTAINEERS FOUNDATION mark in association with its services, including charitable
17 fundraising services; community grants; conservation education; property ownership; and the
18 ownership, management and expansion of The Preserve. The MOUNTAINEERS FOUNDATION
19 mark is inherently distinctive and has become widely known to the relevant class of consumers as
20 the source of its services such that the relevant class of consumers has come to know, rely upon
21 and associate the MOUNTAINEERS FOUNDATION mark with The Foundation and to recognize
22 it as the source of the charitable fundraising services provided by The Foundation.

23 46. Since its creation in 1968, The Foundation has used the MOUNTAINEERS
24 FOUNDATION without any license, supervision, or control by Defendant.

G. **Defendant's Infringing Uses of The Foundation's Marks**

47. The Foundation continues to make extensive use of the MOUNTAINEERS FOUNDATION on its website and in its promotional materials in connection with its educational and conservation efforts, and in connection with its fund-raising and grant programs.

48. Notwithstanding, Defendant began a campaign to misdirect funds and donations intended for The Foundation to Defendant through misleading statements and misuse of The Foundation's registered mark.

49. Recently, Defendant released a statement that: **"It is important that our members and supporters of our mission understand that gifts and bequests intended for The Mountaineers Foundation be directed to The Mountaineers at our Seattle address: 7700 Sand Point Way NE, Seattle, WA 98115."**²

50. Further, it has begun to use The Foundation's THE MOUNTAINEERS FOUNDATION mark on its website and promotional materials, an example of which is pictured below, in an effort to falsely suggest an affiliation or association with The Foundation that does not exist:



The Mountaineers FoundationTM is a philanthropic arm and trademark of The Mountaineers®, a 501(c)(3) nonprofit organization, tax ID: 27-3009280, 7700 Sand Point Way NE, Seattle, WA 98115.

51. Defendant has made a number of false and deceptive statements intended to mislead the public into misdirecting their donations intended for The Foundation to Defendant. These statements include, but are not limited to, assertions on its public website that: (1) "The

² The Mountaineers, *The Mountaineers Foundation*, <https://www.mountaineers.org/about/about-the-mountaineers-foundation> (emphasis in original).

1 Mountaineers FoundationTM is a philanthropic arm and trademark of The Mountaineers®"; and (2)
 2 "The Keta Legacy Foundation operated under license to use The Mountaineers name for many
 3 years. Moving forward, Defendant no longer requires the services of a separate licensee as a
 4 fundraising and grant-making agent and will use The Mountaineers Foundation name
 5 exclusively."³

6 52. These statements are false. The Foundation is an independent organization. It is
 7 not, nor has is even been, a "philanthropic arm" of Defendant. Moreover, there is no license. There
 8 has never been any license to use THE MOUNTAINEERS or any permutation of this name
 9 between The Foundation and Defendant. These statements were made solely to misdirect
 10 benefactors of The Foundation to Defendant.

11 H. **Defendant's Trademark Application and Registrations**

12 53. Defendant is identified as the owner of U.S. Trademark Application Serial No.
 13 88/643,474 for THE MOUNTAINEERS FOUNDATION in International Class 36 for use in
 14 conjunction with "Charitable services, namely, raising funds for and awarding grants to
 15 organizations supporting the environment, conservation, outdoor education, outdoor recreation,
 16 and natural history (the "'474 Application"). The '474 Application was filed on October 5, 2019.
 17 A copy of the '474 Application is attached hereto as **Exhibit H**.

18 54. Defendant is identified as the owner of U.S. Trademark Registration No. 5,350,305
 19 for THE MOUNTAINEERS in International Class 36 for use in conjunction with "Charitable
 20 fundraising services for the environment, conservation, outdoor education, outdoor recreation, and
 21 natural history" (the "'305 Registration"). The '305 Registration issued on December 5, 2017. A
 22 copy of the '305 Registration is attached hereto as **Exhibit I**. A copy of the U.S. Trademark
 23 Application Serial No. 87/445,767 (the "'767 Application"), which resulted in the '305
 24 Registration, is attached hereto as **Exhibit J**.

25 _____
 26 ³ The Mountaineers, *The Mountaineers Foundation*, <https://www.mountaineers.org/about/about-the-mountaineers-foundation>.

1 55. Defendant is identified as the owner of U.S. Trademark Registration No. 5,350,307
2 for M THE MOUNTAINEERS and Design in International Class 36 for use in conjunction with
3 "Charitable fundraising services for the environment, conservation, outdoor education, outdoor
4 recreation, and natural history" (the "'307 Registration"). The '307 Registration issued on
5 December 5, 2017. A copy of the '307 Registration is attached hereto as **Exhibit K**. A copy of the
6 U.S. Trademark Application Serial No. 87/445,773 (the "'773 Application"), which resulted in the
7 '307 Registration, is attached hereto as **Exhibit L**.

8 56. The '305 Registration and the '307 Registration are collectively referred to herein
9 as "Defendant Registrations."

10 57. In connection with its trademark filings, Defendant made a number of statements
11 to the Trademark Office, attesting that: (1) "To the best of the signatory's knowledge and belief,
12 no other persons, except, if applicable, concurrent users, have the right to use the mark in
13 commerce, either in the identical form or in such near resemblance as to be likely, when used on
14 or in connection with the goods/services of such other persons, to cause confusion or mistake, or
15 to deceive"; (2) "the applicant is entitled to use the mark in commerce"; and (3) that "[t]o the best
16 of the signatory's knowledge and belief, the facts recited in the application are accurate." See
17 Exhibits H, J and L.

18 58. These statements are false. It is indisputable that Defendant knew that The
19 Foundation previously, substantially, continuously and exclusively used THE MOUNTAINEERS
20 and THE MOUNTAINEERS FOUNDATION for charitable fundraising when Defendant filed the
21 '474 Application and the applications to register Defendant Registrations for confusingly similar
22 services.

23 59. Defendant nevertheless executed these declarations with the knowledge and belief
24 that the statements in the declaration were false.

25 60. Defendant made false statements in support of the trademark applications with the
26 intent to deceive the Trademark Office and to induce the Trademark Office to grant Defendant's

1 applications to register Defendant Registrations. The Trademark Office reasonably relied upon
 2 the truth of Defendant's false statements when it granted Defendant's applications to register
 3 Defendant Registrations.

4 61. Defendant's activities constitute fraud on the Trademark Office, warranting the
 5 cancellation of Defendant Registrations, invalidation of the '474 Application and an attorney's fees
 6 award for willful infringement.

7 **V. CLAIMS FOR RELIEF**

8 **FIRST CLAIM FOR RELIEF**

9 **Unfair Competition and False Designation of Origin Under 15 U.S.C. § 1125(a)(1)(A)**

10 62. The Foundation re-alleges and incorporates by reference, as if fully set forth herein,
 11 all of the preceding paragraphs.

12 63. The Foundation owns all of the right, title, interest, and goodwill in and to, and
 13 holds the first, superior and exclusive rights to use the MOUNTAINEERS FOUNDATION mark
 14 in conjunction with charitable fundraising and grant award services for the environment,
 15 conservation, outdoor education, outdoor recreation and natural history.

16 64. The Foundation gained prior state and common law rights throughout the United
 17 States in the MOUNTAINEERS FOUNDATION mark in conjunction with charitable fundraising
 18 and grant award services for the environment, conservation, outdoor education, outdoor recreation
 19 and natural history, long before Defendant. The Foundation has continuously used the
 20 MOUNTAINEERS FOUNDATION mark in commerce in conjunction with charitable fundraising
 21 and grant award services for the environment, conservation, outdoor education, outdoor recreation
 22 and natural history, and continues to use the mark in commerce in association with these services.

23 65. The Foundation's the MOUNTAINEERS FOUNDATION mark is inherently
 24 distinctive and/or has acquired secondary meaning.

25 66. Without permission, authority, or license from The Foundation, Defendant has been
 26 offering similar charitable fundraising services for the environment, conservation, outdoor

1 education, outdoor recreation and natural history, under THE MOUNTAINEERS and THE
2 MOUNTAINEERS FOUNDATION. These uses by Defendant have caused and are likely to
3 continue to cause consumer confusion.

4 67. The Foundation is informed and believes, and based thereon alleges, that Defendant
5 adopted THE MOUNTAINEERS and THE MOUNTAINEERS FOUNDATION marks with
6 knowledge of, and the intent to call to mind and create a likelihood of confusion with regard to,
7 and/or trade off the goodwill of The Foundation and would cause confusion, mistake, or deception
8 among donors and the public.

9 68. Defendant knew of The Foundation's prior use of the MOUNTAINEERS and the
10 MOUNTAINEERS FOUNDATION mark. By adopting, commencing use and continuing to use
11 THE MOUNTAINEERS and THE MOUNTAINEERS FOUNDATION marks in interstate
12 commerce in association with similar services, Defendant intended to induce and will likely
13 continue to induce the public to misdirect funds and donations by trading off of the extensive
14 goodwill and reputation built up by The Foundation in the MOUNTAINEERS FOUNDATION
15 mark.

16 69. The Foundation has no control over the nature and quality of the goods and/or
17 services offered by Defendant under THE MOUNTAINEERS and THE MOUNTAINEERS
18 FOUNDATION marks. The Foundation's reputation and goodwill, and the value of the
19 MOUNTAINEERS FOUNDATION mark, has been and will be harmed by Defendant's continued
20 use of THE MOUNTAINEERS and THE MOUNTAINEERS FOUNDATION marks for
21 charitable fundraising services without authorization.

22 70. Moreover, Defendant's use of THE MOUNTAINEERS and THE
23 MOUNTAINEERS FOUNDATION marks has resulted in and is likely to result in consumer
24 confusion.

25 71. Because of the likelihood of confusion between the Parties' marks, any defects,
26 publicity, objections or faults found with Defendant's goods and/or services marketed under THE

1 MOUNTAINEERS and THE MOUNTAINEERS FOUNDATION marks would negatively reflect
2 upon and injure the reputation that The Foundation has established over the past 50 years.
3 Defendant's use generates confusion and undermines testamentary intent in order to unlawfully
4 gain bequeathed assets intended for The Foundation.

5 72. Defendant's acts alleged above have caused, and if not enjoined will continue to
6 cause, irreparable and continuing harm to The Foundation's intellectual property, business,
7 reputation and goodwill. The Foundation has no adequate remedy at law because monetary
8 damages are inadequate to compensate The Foundation for injuries caused by Defendant.

9 73. Such acts have caused and are likely to cause confusion and deception among the
10 public and/or are likely to lead the public to believe that The Foundation has authorized, approved,
11 or somehow sponsored Defendant's use of THE MOUNTAINEERS and THE MOUNTAINEERS
12 FOUNDATION marks in connection with Defendant's charitable fundraising services.

13 74. The aforesaid wrongful acts of Defendant constitute false designation of origin,
14 false or misleading description of fact, and/or false or misleading representation of fact, all in
15 violation of 15 U.S.C. § 1125(a).

16 75. Defendant's conduct has been knowing, deliberate, willful and intended to cause
17 confusion, or to cause mistake or to deceive in violation of The Foundation's rights.

18 76. Defendant's wrongful conduct, as averred above, has permitted and will permit it
19 to receive substantial gifts and profits on the strength of The Foundation's reputation, marketing,
20 advertising and consumer recognition. The Foundation seeks an accounting of Defendant's profits
21 and further requests that the Court increase the award of Defendant's profits to The Foundation in
22 an amount in the Court's discretion.

23 77. As a result of Defendant's acts as alleged above, The Foundation has incurred
24 damages in an amount to be proven at trial.

1 78. Pursuant to 15 U.S.C. § 1118, The Foundation asks the Court for an order forcing
2 Defendant to deliver up for destruction all materials in Defendant's possession that infringe upon
3 The Foundation's rights.

4 **SECOND CLAIM FOR RELIEF**
5 **Cancellation of Trademark Registrations Under 15 U.S.C. § 1120**

6 79. The Foundation re-alleges and incorporates by reference, as if fully set forth herein,
7 all of the preceding paragraphs.

8 80. The Defendant applied for and fraudulently obtained Defendant Registrations.
9 Statements made in each application for Defendant Registrations were false, and known in fact by
10 Defendant to be false at the time these statement were made.

11 81. Defendant procured Defendant Registrations by willfully making false
12 representations of material fact in its trademark applications.

13 82. Defendant willfully made these materially false statements with the intent to
14 deceive the Trademark Office and to induce the Trademark Office to grant Defendant's
15 applications for Defendant Registrations. The Trademark Office reasonably relied upon the truth
16 of Defendant's false statements, granted Defendant's applications for Defendant Registrations and
17 allowed the continued registration of Defendant Registrations.

18 83. Defendant Registrations also were obtained contrary to Sections 1052 and 1064 of
19 the Lanham Act because the marks registered to Defendant under Defendant Registrations are
20 being used by or with Defendant's permission in a manner so as to misrepresent the source of
21 services offered in connection with THE MOUNTAINEERS mark.

22 84. Defendant's uses infringe on the valid prior trademark rights established at common
23 law by The Foundation prior to the filing of the applications to register Defendant Registrations.

24 85. The Foundation has been harmed by Defendant Registrations. Each of Defendant
25 Registrations is required to be cancelled under 15 U.S.C. §§ 1064 and 1119. Defendant is liable
26 for The Foundation's damages under 15 U.S.C. § 1120.

THIRD CLAIM FOR RELIEF
Declaratory Judgment Under 28 U.S.C. § 2201

86. The Foundation re-alleges and incorporates by reference, as if fully set forth herein, all of the preceding paragraphs.

87. The Foundation is the prior, senior user of THE MOUNTAINEERS FOUNDATION mark in intrastate and interstate commerce, in connection with charitable fundraising and grant making services.

88. An actual, substantial and justiciable controversy exists between the parties with respect to THE MOUNTAINEERS FOUNDATION mark and THE MOUNTAINEERS mark for use in association with charitable fundraising services. The Foundation contends that it is the prior, senior user and owner of THE MOUNTAINEERS FOUNDATION mark and the prior user of THE MOUNTAINEERS mark in association with charitable fundraising services, and further contends that Defendant is using the mark in violation of The Foundation's rights under the Lanham Act, Washington law and at common law. Defendant disputes The Foundation's contentions. A copy of Defendant's April 30, 2019 letter is attached hereto as **Exhibit M**. On October 9, 2019, Defendant recently renewed the demands contained in this letter.

89. The Foundation's use of THE MOUNTAINEERS FOUNDATION mark has not, does not and will not, (a) cause confusion or mistake or deceive the public in violation of Lanham Act § 32(1) (15 U.S.C. § 1114(1)); (b) constitute unfair competition or a false designation of origin in violation of Lanham Act § 43(a) (15 U.S.C. § 1125(a)); (c) constitute unfair competition or trademark infringement under state statutory or common law; or (d) otherwise violate state or federal statutory or common law.

90. Defendant has abandoned any purported rights to THE MOUNTAINEERS and THE MOUNTAINEERS FOUNDATION by its failure to use, and intent not to resume use these marks in commerce. Alternatively, Defendant has expressly abandoned and/or engaged in naked

1 licensing of these marks such that Defendant owns no rights to these marks and/or cannot enforce
2 rights in these marks.

3 91. The Foundation is entitled to a declaratory judgement that it is the prior, senior user
4 of MOUNTAINEERS and the MOUNTAINEERS FOUNDATION marks in intrastate and
5 interstate commerce for charitable fundraising services and that it owns common law rights in
6 these marks in all states and territories in the United States as the prior user.

7 92. The Foundation is entitled to a declaration that its use of MOUNTAINEERS and
8 the MOUNTAINEERS FOUNDATION does and will not infringe Defendant's marks or otherwise
9 violate the Lanham Act or common law.

10 93. The Foundation is entitled to a declaration that Defendant abandoned its purported
11 rights to THE MOUNTAINEERS and THE MOUNTAINEERS FOUNDATION marks without
12 any intention to resume use for over three (3) years.

13 94. The Foundation is entitled to a declaration that Defendant engaged in naked
14 licensing of THE MOUNTAINEERS and THE MOUNTAINEERS FOUNDATION marks such
15 that these marks are invalid and not enforceable.

16 **FOURTH CLAIM FOR RELIEF**

17 **Trademark Infringement of Washington State Trademark Registration**

18 95. The Foundation re-alleges and incorporates by reference, as if fully set forth herein,
19 all of the preceding paragraphs.

20 96. Defendant's acts alleged herein and specifically, without limitation, Defendant's use
21 of THE MOUNTAINEERS and THE MOUNTAINEERS FOUNDATION marks infringe upon
22 The Foundation's registered trademark (THE) MOUNTAINEERS FOUNDATION under Wash.
23 Rev. Code §§ 19.77.040, 19.77.140, and 19.77.150.

24 97. Defendant's acts alleged above have caused, and if not enjoined will continue to
25 cause, irreparable and continuing harm to The Foundation's intellectual property rights, business,
26 reputation, and goodwill.

98. Defendant should be enjoined from using THE MOUNTAINEERS FOUNDATION. Defendant should be enjoined from using THE MOUNTAINEERS in association with charitable fundraising services. Defendant's uses of these marks constitute trademark infringement such that The Foundation is entitled to recover any applicable injunctive relief and damages, including any profits derived from and/or all damages suffered by reason of wrongful use or display of the name THE MOUNTAINEERS FOUNDATION, destruction or delivery to The Foundation or this Court of any of Defendant's property or materials bearing the name THE MOUNTAINEERS FOUNDATION, reasonable attorneys' fees, and/or an amount not to exceed three times the profits and damages derived from Defendant's wrongful use or display of the name THE MOUNTAINEERS FOUNDATION.

FIFTH CLAIM FOR RELIEF

Violation of Washington's Consumer Protection Act, Wash. Rev. Code § 19.86 et seq.

99. The Foundation re-alleges and incorporates by reference, as if fully set forth herein, all of the preceding paragraphs.

100. The Foundation and Defendant are "persons" within the meaning of Wash. Rev. Code § 19.86.010(2).

101. Defendant is engaged in "trade" or "commerce" within the meaning of Wash. Rev. Code § 19.86.010(2).

102. The Washington Consumer Protection Act ("Washington CPA") makes unlawful "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." Wash. Rev. Code § 19.86.020.

103. By the acts described herein, Defendant engaged in unlawful, unfair, and deceptive business acts and practices within the meaning of the Washington CPA by causing likelihood of confusion or misunderstanding as to the source, origin, or sponsorship of the parties' respective products or services; causing likelihood of confusion, or of misunderstanding as to the affiliation, connection, or association of Defendant, or Defendant's services with The Foundation's services;

1 and using deceptive representations or designations of origin in connection with Defendant's
2 services.

3 104. Defendant's business acts and practices are unlawful.

4 105. Defendant's business acts and practices were fraudulent in that a reasonable person
5 would likely be deceived by their material misrepresentations and omissions.

6 106. Defendant's business acts and practices were unfair in that the substantial harm
7 suffered by The Foundation outweighs any justification that Defendant may have for engaging in
8 those acts and practices.

9 107. Defendant owed and continues to owe The Foundation a duty to refrain from the
10 above-described unfair and deceptive practices.

11 108. Defendant knew or should have known that its conduct was in violation of the
12 Washington CPA.

13 109. Defendant's acts alleged above have caused, and if not enjoined will continue to
14 cause, irreparable and continuing harm to the public, as well as The Foundation's marks, business,
15 reputation and goodwill.

16 110. Defendant's business acts and practices are injurious to the public interest because
17 they have injured members of the public and have the capacity to injure members of the public.

18 111. The Foundation has been harmed in its business and property, as a result of
19 Defendant's unlawful, unfair, and fraudulent business acts and practices.

20 112. The Foundation has no adequate remedy at law because monetary damages are
21 inadequate to compensate The Foundation for the injuries caused by Defendant. Pursuant to Wash.
22 Rev. Code § 19.86.090, The Foundation is entitled to an order enjoining Defendant's unfair and/or
23 deceptive acts or practices, damages, punitive damages, and attorneys' fees, costs, and any other
24 just and proper relief available under the Washington CPA. Because Defendant's actions were
25 willful and knowing, The Foundation's damages should be trebled.

SIXTH CLAIM FOR RELIEF
Common Law Trademark Infringement

113. The Foundation re-alleges and incorporates by reference, as if fully set forth herein, all of the preceding paragraphs.

114. Defendant's acts alleged herein and specifically, without limitation, Defendant's use of THE MOUNTAINEERS and THE MOUNTAINEERS FOUNDATION marks infringe upon The Foundation's exclusive trademark rights in the MOUNTAINEERS FOUNDATION mark.

115. Defendant's acts alleged above constitute common law trademark infringement and unfair competition, and have caused, and if not enjoined will continue to cause, irreparable and continuing harm to The Foundation's intellectual property rights, business, reputation, and goodwill. The Foundation has no adequate remedy at law because monetary damages are inadequate to compensate The Foundation for the injuries caused by Defendant.

116. Defendant acted with full knowledge of The Foundation's use of, and common law rights to, THE MOUNTAINEERS FOUNDATION mark and without regard to the likelihood of confusion of the public resulting from Defendant's activities.

117. Defendant's actions demonstrate an intentional, willful and malicious intent to trade on the goodwill associated with The Foundation's THE MOUNTAINEERS FOUNDATION mark to the great and irreparable injury of The Foundation.

118. As a result of Defendant's acts, as alleged above, The Foundation has incurred damages in an amount to be proven at trial. At a minimum, The Foundation is entitled to injunctive relief, to an accounting of Defendant's profits, damages and costs.

SEVENTH CLAIM FOR RELIEF
Unjust Enrichment

119. The Foundation re-alleges and incorporates by reference, as if fully set forth herein, all of the preceding paragraphs.

120. By misusing The Foundation's trademark, name and brand, Defendant incurred a benefit from The Foundation, to The Foundation's detriment.

121. Defendant has appreciated that benefit. It has permitted Defendant to make use of The Foundation's trademark, name and brand to solicit and misdirect donations intended for The Foundation without incurring the expense of independently developing the goodwill associated with The Foundation's trademark, name and brand.

122. By reason of its above-described conduct, Defendant caused damage to The Foundation.

123. Defendant's acceptance and retention of the benefit is inequitable and unjust because the benefit was obtained by Defendant through deceptive, unfair and unlawful means.

124. Equity cannot in good conscience permit Defendant to be economically enriched for its unjust actions at The Foundation's expense and in violation of state law. Therefore, restitution or disgorgement, or both, of such economic enrichment is required.

VI. PRAYER FOR RELIEF

WHEREFORE, The Foundation requests that the Court enter judgment against Defendant, as follows:

a. That the Court issue preliminary and permanent injunctive relief against Defendant, and that Defendant, its officers, agents, representatives, servants, employees, attorneys, successors, licensees and assignees and all others in active concert or participation with Defendant, be enjoined and restrained from continued acts of infringement of the trademarks at issue in this litigation, and to protect The Foundation's trademark rights, brand, and goodwill and in order to prevent further actual, threatened and inevitable infringement upon those rights by Defendant;

b. That the Court find Defendant's acts complained of herein unlawful as constituting unfair competition, false designation of origin, trademark infringement, violations of the Washington Consumer Protection Act, and unjust enrichment under the causes of action asserted under this Complaint;

c. That the Court order Defendant to expressly abandon its application for THE MOUNTAINEERS FOUNDATION, U.S. Serial No. 88/643474;

1 d. That the Court find that Defendant fraudulently obtained Defendant Registrations
2 and/or are not entitled to Defendant Registrations, and issue an Order directing the Director of the
3 United States Patent and Trademark Office to cancel U.S. Trademark Registration Nos. 5350305
4 and 5350307 from the Principal Register;

5 e. That the Court require Defendant deliver up for destruction all labels, signs, prints,
6 advertisements and other materials that infringe The Foundation's trademark rights and/or are a
7 result of any false descriptions, false designation of origin, false representation or origin and false
8 advertising by Defendant;

9 f. That the Court order an accounting of all profits received by Defendant arising from
10 the causes of action asserted in this Complaint;

11 g. That the Court issue a declaratory judgment, pursuant to 28 U.S.C. §§ 2201(a) and
12 2202, and the Lanham Act, 15 U.S.C. § 1051 et seq., declaring that:

13 i. The Foundation is the prior user of THE MOUNTAINEERS and THE
14 MOUNTAINEERS FOUNDATION in association with charitable
15 fundraising services in the United States and that The Foundation owns
16 common law rights in these marks in all state and territories in the United
17 States;

18 ii. The Foundation's use of THE MOUNTAINEERS and THE
19 MOUNTAINEERS FOUNDATION has not, does not and will not infringe
20 Defendant's marks or otherwise violate the Lanham Act or common law;

21 iii. Defendant expressly abandoned any rights to THE MOUNTAINEERS and
22 THE MOUNTAINEERS FOUNDATION for use in association with
23 charitable fundraising services, for over three (3) years, without any
24 intention to resume use; and,

25 iv. Defendant failed to police use of THE MOUNTAINEERS and THE
26 MOUNTAINEERS FOUNDATION by The Foundation for approximately

1 fifty years and engaged in naked licensing, and is foreclosed from asserting
2 rights in these marks.

3 h. That the Court award The Foundation all gains, profits and advantage derived by
4 Defendant for its unlawful acts, including an award of increased profits;

5 i. That the Court award The Foundation treble damages as provided by law;

6 j. That the Court award The Foundation its attorneys' fees, expenses and costs
7 incurred herein, including prejudgment and post-judgement interest; and

8 k. That the Court grant The Foundation all other relief to which it is entitled and such
9 other relief as the Court deems just and equitable.

10
11 Dated this 8th day of November 2019.

12 K&L GATES LLP

13 By s/ Pam K. Jacobson
14 Pam K. Jacobson, WSBA No. 31810
15 Ryan W. Edmondson, WSBA No. 41651
16 K&L GATES LLP
17 925 4th Ave., Suite 2900
18 Seattle, WA 98104
19 Phone: (206) 370-7605
20 pam.jacobson@klgates.com
21 ryan.edmondson@klgates.com

22 *Attorneys for Plaintiff*
23 *Mountaineers Foundation*
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